

**MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS
November 6, 2003**

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, November 6, 2003, beginning at 2:00 P.M. at the Town of Warrenton Police Department, 333 Carriage House Lane, Warrenton, Virginia. Members present were Mrs. Peg Mailler, Chairperson; Mr. Eugene Lofdahl, Vice-Chairperson; Mr. John Meadows, Secretary; Mr. James W. Van Luven; Mr. Maximilian Tufts, Jr.; Mr. Mark Rohrbaugh. Also present were Ms. Tracy Gallehr, Assistant County Attorney; Ms. Kimberley Johnson, Zoning Administrator; Mr. Fred Hodge, Assistant Zoning Administrator; and Mrs. Debbie Dotson, Office Associate III.

MINUTES: On a motion made by Mrs. Mailler and seconded by Mr. Meadows, the approval of the October BZA meeting minutes will be deferred until the December meeting.

The motion carried unanimously.

LETTERS OF NOTIFICATIONS AND PUBLIC NOTICE: Mr. Hodge stated that to the best of this knowledge, the cases before the Board of Zoning Appeals for a public hearing had been properly advertised, posted, and letters of notification sent to adjoining property owners. Mrs. Dotson read the Public Hearing Protocol.

SPECIAL PERMIT #52217, FAUQUIER SPCA, INC. (OWNERS)

Applicants are requesting special permit approval to enlarge an existing animal shelter and to amend a special permit condition, PIN #7902-51-8200, located at 9350 Rogues Road, Cedar Run District, Casanova, Virginia.

Mr. Hodge stated that the BZA opened the public hearing on September 5, 2003. The special permit has been continued so that the Board could obtain additional drawings. Mr. Hodge reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Mr. Nevill, applicant, addressed the discrepancies in the drawings. He stated that 2700 sq. ft. is the size of the building being built.

Mrs. Mailler asked Mr. Nevill if all the kennels are enclosed. Mr. Nevill stated the kennels are enclosed. He stated that while the inside runs are being cleaned the dogs are let out into the run until the inside runs are cleaned.

Mr. Meadows asked Mr. Nevill if the paddock area for large animals will be infringed upon. Mr. Nevill stated that it is an existing paddock and was needed for larger animals and would not be infringed upon. Mr. Meadows asked if the property line was the just into the weeds to the bridle path. Mr. Nevill stated there is a stake at the corner of the property. Mr. Meadows asked if Mr. Nevill is considering the stake the measuring point

of 125'. Mr. Nevill stated it was probably 150'. Mr. Meadows asked about the 25' wide parcel that is dedicated to VDOT for the future widening Rt. 602. Mr. Nevill did not know what VDOT would do with that 25' parcel.

Mr. Hodge, Assistant Zoning Administrator, stated he was under the impression that the whole building was going to be all enclosed and Mr. Nevill stated that the roof line is going to be like the existing building where it divides the interior portion from the exterior portion. Mr. Nevill stated that the exterior portion was a slab with Long fencing around it.

Ms. Mailler asked Mr. Nevill if the dogs were all let out at the same time. Mr. Nevill replied that the dogs were let out by section. The dogs are out only during the time it takes to clean the runs.

Ms. Mildred Riddell, citizen, asked Mr. Nevill if the new plans will infringe upon the equestrian lane that allows people to go from Rogues Road to her farm. Mr. Nevill stated that it was not their intention to infringe upon it.

On a motion made by Mr. Rohrbaugh and seconded by Mr. Van Luven, the BZA noted that due notice and hearing as required by the Code of Virginia Section 15.2-2204 and Fauquier County Code Section 5-009 had been provided, and voted to grant the special permit, with the following findings:

1. The proposed use will not adversely affect the use or development of neighboring properties.
2. It is in accordance with the applicable zoning district regulations and to applicable provisions of the adopted Comprehensive Plan, and does conform to the general standards set forth in Section 5-006(1) through (9) of the Zoning Ordinance of Fauquier County, which sections are incorporated in this Motion as if fully set forth.
3. The use will be compatible with the neighborhood in which it is to be located.
4. The application does comply with the specific standards which apply to the use in question.

5-1102 Standards for All Category 11 Uses

In addition to the standards set forth in Section 006 above, the following standards shall apply:

1. For public uses, it shall be concluded that the proposed location of the special permit/special exception use is necessary for the rendering of efficient governmental services to residents within the general area of the location.
2. In or abutting the Rural and Residential District, all open off-street parking and loading areas shall be no closer than 25 feet from any lot line and shall be effectively screened.

5. The special permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance: (Conditions including, but not limited to, those recited in Section 5-007 A-L of the Zoning Ordinance)
 - (a) The proposed building will be no closer than 80 feet from the front property line and no closer than 125 feet from the southern property line.
 - (b) Plantings, buffering to the extent of filling in the existing row and adding a row towards Rt. 602 which is not within the 25' dedicated VDOT right-of-way and continue on to the paddock area.
 - (c) Site plan approval.

The motion carried unanimously.

Mr. Nevill stated that the original application was for 75' not 80'. Mr. Hodge stated that it was originally 75' but based on the submitted drawings it became 80'.

On a motion made by Mr. Rohrbaugh and seconded by Mr. Lofdahl, the motion was amended to read: (a) the proposed building will be no closer than 75 feet from the front property line.

The amended motion carried unanimously.

SPECIAL PERMIT #52707, WILLIAM T. & AMY CANARD (OWNERS)

Applicants are requesting special permit approval to construct a 30' x 70' (2100 sq. ft.) building for an auto glass facility on the property, PIN #6969-68-4807, located at 8339 W. Main Street, Marshall District, Marshall, Virginia.

Mr. Hodge stated that a BZA site visit was made earlier today, and he reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Mr. William Canard, owner, appeared at the meeting and agreed with the staff report. Mr. Canard stated that there is an old structure in the back that he would like to tear down and replace with a metal building to do auto glass work. "My only concern is about the Marshall Business Association is trying to get some things done at the same time I'm trying to get this done." He did not know if there was a conflict. He stated that he is trying to clean up his lot that he has owned.

Mr. Meadows asked Mrs. Johnson if Mr. Canard was talking about the Marshall Business Association. Mr. Canard stated that Marshall has some service agreement that they are trying to pass to have more control over the buildings. There seemed to be a lot of concern about getting things passed.

Mr. Meadows stated that the Marshall Service District is one step behind Mr. Canard. Their plan still needs to go through the Fauquier Board of Supervisors.

Mr. Jack Whiting, resident of the Marshall District, does not disagree with anything that Mr. Canard has stated. He stated Mr. Canard is a good businessman and he would like to have him have a successful business. Mr. Whiting stated that he participated in the citizens' group that updated the comprehensive plan for the Marshall Service District. It has been approved by the Planning Commission and is scheduled to go before the Board of Supervisors this month. Mr. Whiting stated that the one key thing they are trying to preserve, to the extent possible, is to not take away the traditional look of Marshall. The brick building that is being demolished is going to be replaced with a steel building. That is what they do not want to see.

On a motion made by Mr. Van Luven and seconded by Mr. Rohrbaugh, the BZA noted that due notice and hearing as required by the Code of Virginia Section 15.2-2204 and Fauquier County Code 5-009 had been provided, and voted to approve the special permit, with the following findings and conditions:

1. The proposed use will not adversely affect the use or development of neighboring properties.
2. It is in accordance with the applicable zoning district regulations and to applicable provisions of the adopted Comprehensive Plan, and does conform to the general standards set forth in Section 5-006(1) through (9) of the Zoning Ordinance of Fauquier County, which sections are incorporated in this motion as if fully set forth.
3. The use will be compatible with the neighborhood in which it is to be located.
4. The application does comply with the specific standards which apply to the use in question.
5. The special permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance: (Conditions including, but not limited to, those recited in Section 5-007 A-L of the Zoning Ordinance
 - (a) Site plan approval.
 - (b) Hours to be as stated in the application.

The motion carried unanimously.

SPECIAL PERMIT #SPPT04-CR-011, DAVID C. DILLEN (OWNER) & JOHN AND PATRICIA NORTH (CONTRACT OWNERS)

Applicants are seeking special permit approval to locate a bed and breakfast with a maximum of ten (10) guests on the property, PIN #7902-89-5059, located at 8871 Rogues Road, Cedar Run District, Warrenton, Virginia.

Mr. Hodge stated that a BZA site visit was made earlier today, and he reviewed the staff report, a copy of which is attached to and made a part of the minutes. He noted that if the

special permit was approved it would be subject to site plan approval. He stated that the applicants have also applied for a special exception. However, the only matter before this board is the bed and breakfast special permit.

Mr. John North, contract owner, appeared at the meeting representing the application and noted agreement with the staff report.

Mr. Lofdahl asked Mr. North if one of the improvements he was making was to asphalt the driveway and make it circular. Mr. North stated no, that the improvement was to the first 75' of the driveway to meet VDOT requirements.

Ms. Mildred Riddell, resident of Casanova and the Cedar Run District, stated that as a long time taxpayer in Fauquier, she objected to being forced to a state of almost eternal vigilance over Melrose Castle. A plan for a commercial use of Melrose was withdrawn from the County's consideration as recently as last year when Mr. Dillen and Claire's Caterers met strong opposition from a large group of concerned citizens. This time, the proponents have devised a smoke screen with a plan to get approval for a B&B and then with one foot in the door apply for a special exception for the really big enterprise which is in the wrong location for many reasons. The application for that is already filed. Please do not allow this duplicity to prevail. It is what you might call a wolf in B&B skin.

Mr. Greg Huddleston, neighbor, stated that he had no comments on the bed and breakfast but in view of the light of the special exception that is being requested down the road that he would have serious and strong objections on a matter of safety regarding the amount of traffic on the road and the effect it would have on the nature of a 1 ½ lane country byway. "The primary concern I have regards safety and while we are not here to talk about the special exception I do want it to be noted."

Ms. Mailler stated to Mr. Huddleston that he would have the opportunity to speak to the Board of Supervisors.

Ms. Nancy Crawford, neighbor, stated that "I concur with Mrs. Riddell and object strongly to the bed and breakfast because of the obvious first step leading to the Class A events."

Ms. Rebecca McClellan, resident of Casanova, stated that she sees this as a subterfuge. "I agree with Mrs. Riddell. I do not believe that we need a bed and breakfast. I oppose the bed and breakfast on the grounds that it will suffer from various types of pollution. I live where I have a vantage point on a hill overlooking the wooded area in which Melrose exists. On the few occasions when the former owners allowed it to be opened for non-commercial events, I could noticeably hear things. The light pollution emitted just on those instances interfered, in my opinion, with the dark sky policy which I strongly hope Fauquier will at some point be educated enough to decide upon as a policy here. I do not see any reason to start light pollution in that area of the county. Moreover, even the types of things that they would be doing there, cooking for people even for the bed and

breakfast if that was what they only wanted to do, would alter the noise and the air pollution that comes from food preparation (fans, etc.). That is an enormous thing when you come into even a town the size of Warrenton with the number of restaurants and such that are generating food. You can almost immediately smell in the air, grilling and that sort of thing. It's like probably living next to someone who is always grilling meat. We have a lot of fog and inversion in that area and it will keep it down in where the population is breathing."

Ms. Mailler asked Ms. McClellan if she felt the same if someone was cooking for a family of twelve. Ms. McClellan replied that she didn't think there were families of twelve anymore but it would still be pollution from her perspective if she had to go outside and smell that kind of thing. "I don't want to feel as if I am living in a commercial district. As a taxpayer I feel the same as Ms. Riddell that we are constantly being targeted as a place to set up some sort of commercial establishment." Ms. McClellan asked Mr. and Mrs. North if their moving into Melrose Castle was contingent upon the approval of the bed and breakfast. Mr. North answered that the contract they had on Melrose Castle was contingent on both the approval of the special permit and the special exception. Ms. McClellan replied that if that is the case that essentially they are making the decision to move into our neighborhood as business owners, as commercial neighbors. As far as Ms. McClellan is concerned that should not be the determining factor for them to move into Melrose Castle or not.

Ms. Carol Goshorn, neighbor and employee of Spring Hill Farm, stated that Spring Hill Farm totally surrounds Melrose Castle. It is a very large farm and it is a thoroughbred horse farm. "My concern with the bed and breakfast and the events are the people. My concern is that these people will wander on to Spring Hill Farm and want to see the foals. If someone is hurt by a horse or if a horse is hurt by someone, the fees would be astronomical. I am very much opposed to it. The road itself is too small to handle the additional traffic. There are blind turns and blind hills and very dangerous for someone who has had too much to drink. It is cause for great concern and I want to let it be known that we are very much opposed to it. I believe that Ned Evans, owner of Spring Hill Farm, has written a letter."

Ms. Mary Roessel, closest neighbor, stated that if it was a bed and breakfast she would be in favor of something to do with that lovely old Gray Ghost; however, "a bed and breakfast would never work there. You could never make enough money on it to keep it a bed and breakfast. Therefore, the next thing that comes is the alcohol and alcohol on 602 is very, very dangerous. Every weekend we have many children and adults out there on bicycles. Sometimes 10 and 20 at a time. It is a dangerous road if you know it but a stranger would not know this. I think if they just wanted to do breakfast and high tea that would be fine. But there is that thing with alcohol down the line and without a 911 right down the road, there is no way they should be allowed to have any other commercial in Melrose Castle other than maybe an old folk's home."

Mr. North, contract owner, stated that they didn't intend to use any subterfuge or use any form of duplicity. "We filed both applications the same day because the County required

both to be filed the same day. The hearings are on separate days by the County so there was no intent on our part to deceive you in any way shape or form. If you would like to talk about the plans for events, there are two meetings planned in the Parish Hall in the church in Casanova. We will stay as long as you like to talk about the plans and discuss your concerns some of which have we also. As far as the bed & breakfast is concerned, it is not our intent to serve alcohol for breakfast. It is a country breakfast. It is a standard kitchen that has been in Melrose Castle for 15 years. It is not being added to. We are not cooking any additional meals only breakfast for our guests. There will be no additional outside lighting added to the house. Nothing we plan will be done outside, it will be all inside.”

Mr. Meadows stated that “in this process, (and I will refer back to Mrs. McClellan’s comment about if the bed and breakfast being a determining factor in buying Melrose Castle), should they be granted this special permit, it will be granted to them. It will not convey with the property only with the buyer.”

On a motion made by Mr. Meadows and seconded by Mr. Van Luven, the Board voted to defer the case to the next meeting.

The motion carried unanimously.

On a motion by Mr. Meadows and seconded by Mr. Lofdahl, the Board amended the previous motion to keep the public hearing open on the special permit.

The motion carried unanimously.

Mr. Hodge stated to the Board that the first Thursday in January falls on New Year’s Day and that the meeting room at the Town of Warrenton Police Station could be reserved for the next Thursday, January 8, 2004.

On a motion made by Mr. Meadows and seconded by Mr. Lofdahl, the Board approved moving the January 2004 BZA meeting to January 8, 2004, to be held at 333 Carriage House Road, Warrenton, Virginia.

The motion carried unanimously.

Ms. Gallehr stated the Board received a letter earlier today from councilman representing the Home Depot litigation and explained it was up for their consideration as to whether the Board chooses to appeal the decision of the Fauquier County Court to the Virginia Supreme Court. She asked the Board if they needed time to consider and, if so, the Board could go into an Executive session to talk about the legal aspects of that further. Or the Board could take a poll to see where the Board stands on this matter.

Ms. Mailler asked the Board what their favor was.

On a motion made by Mr. Lofdahl and seconded by Mr. Tufts, the Board voted not to appeal the case.

The motion carried unanimously.

Ms. Gallehr updated the Board on the litigation of the Big K radio station. She stated she had been informed by councilman on that case and that they wish to dismiss their appeal of the BZA's determination. There will be pleadings coming in the next month or two to dispose of that case as well.

ADJOURNMENT: There being no further business before the Board, the meeting adjourned at 3:56 P.M.

Margaret Mailler, Chairman

John Meadows, Secretary

Copies of all files and materials presented to the Board are attached to and become a part of these minutes. A recording of the meeting is on file for one year.